

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 351 of 1998

With

SPECIAL CIVIL APPLICATION MO. 1298 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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KK PARMAR

Versus

HIGH COURT OF GUJARAT

Appearance:

Special C.A. No.351/98

MR MUKUL SINHA for Petitioners

MR S N Shelat, Addl.Advocate General with Mr D A

Bambhaniya, AGP for Respondent No. 1

MRS KETTY A MEHTA for Respondent No. 4 to 16

Special C.A. No.1298/98

Mr M B Gandhi for petitioners

Mr S N Shelat, Addl.Advocate General with Mr D A

Bambhaniya, AGP for respondent No.1

Mrs Ketty A Mehta for respondents No.4 to 16

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 11/11/98

ORAL JUDGEMENT

The petitioners in these two Special Civil Applications are employees of the High Court of Gujarat in the cadre of Assistants. By way of these Special Civil Applications under Article 226 of the Constitution of India, they have challenged the promotion of respondents No.2 to 15 on the post of Section Officers. Both the Special Civil Applications rest on similar facts, raise common question of law, except in Special Civil Application No.351/98, wherein the validity of Rule 47 (2) of the High Court of Gujarat (Recruitment and Condition of Services of Staff) Rules, 1992 (hereinafter referred to as the 'Rules of 1992), is also challenged, are heard together and disposed of by the common order.

2. The Hon'ble the Chief Justice of the Gujarat High Court, in exercise of powers conferred by Article 229 of the Constitution and all enabling provisions, framed the Rules governing the service conditions of all the members of the High Court Staff known as High Court of Gujarat (Recruitment and Condition of Services of Staff) Rules, 1992. The said Rule repealed the earlier Rules of 1964. Rule 4 of Rules of 1992, categorizes staff of the High court in four classes. Higher posts of Registrar General down upto Assistant Registrar is placed in the category of Class I Officers. Category of Class II Gazetted Officers consist of Section Officers, Private Secretaries to Hon'ble Judges etc. Class III, Non-Gazetted posts consists of Stenographer grade II, Junior Clerk, Driver etc. Class IV consists of Jamadar, Peon etc. Rule 47 provides for promotion on different posts. Promotion on the post of "Section Officer" is effected from the post of Assistants and Translators strictly on merit and on the basis of record performance. Essential eligibility for promotion is passing prescribed Departmental Examination and five years' experience on the post of Assistant or Translator.

3. In July, 1997, the Registrar commenced the process of promotion for the post of Section Officers. The vacancies were determined in accordance with the Government Resolution of General Administration Department dated 27.1.1978, as follows:

Actual post falling vacant for the following reasons:

(a) Retirement (consequential vacancy : 2 likely to arise on retirement)

(b) Promotion to higher post during the same year : 6

(c) Actual newly created posts : 15

(d) Post expected to be newly sanctioned (leave reserves without post (as per prevailing practice) :

Total: 25

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A list of 113 Assistants qualified to appear at the promotion test of Section Officers was prepared. Out of 113 persons, 16 persons were found not eligible as they had not passed the prescribed Departmental examination. Six persons were relieved to join as Civil Judge (JD) or they were working as Private Secretaries (English Stenographer-Grade I) Class II on the establishment of the High Court. Thus, 91 Assistants were available who had passed the requisite Departmental examination and had completed 5 years' service. As per the Government Resolution dated 29.3.1982, the zone of consideration could be extended upto three times the number of vacancies. Thus, as per the said Government Resolution, only 75 Assistants could be considered for being called for the written and oral test. However, by the order of the then Acting Chief Justice, the zone of consideration was extended from 75 to 91. A decision was also taken that the selection be made as per the past practice i.e. holding written test followed by oral interviews. The criteria adopted for the selection on the earlier occasion was that the Assistants who had secured 40% marks in the aggregate out of 80 marks of which 60 marks were assigned to written test and 20 marks to oral interviews, were considered eligible for selection. Accordingly, the Registrar of the High court issued notice dated 16.7.1997 informing the staff members that the written test for the selection for the post of Section Officers will be held on 9.8.1997. It was further notified that all eligible candidates shall be called for written test. By another Notification dated

16.7.97, it was clarified that written test paper for the selection for the post of Section Officer may be on the pattern of last examination paper or may be objective type or both. The staff members were advised to collect copy of the last years' examination papers from the registry if they so desire. The written test was held on 27th September, 1997. 53 candidates who secured 12 or more marks out of 60 in the written test were called for oral interview before the Selection Committee constituted by the then Hon'ble Acting Chief Justice, consisting of two Hon'ble Judges of this Court. Out of 53 candidates, only 14 candidates could secure 40% marks i.e. 32 out of 80 marks. The said 14 candidates, placed in the select list, have been appointed as Section Officers by the impugned order dated 31.1.1998.

4. The petitioners have challenged the appointment of respondents No.2 to 15 mainly on the following grounds:

- (1) The zone of consideration for 25 vacancies has been erroneously widened from 75 to 91 in breach of the G.R. dated 11.11.1980, as a result thereof, much junior persons have been considered and promoted to the prejudice of the petitioners rendering the entire process of selection illegal and bad in law.
- (2) The respondents have committed illegality in bunching vacancies of different years and thereby extending the zone of consideration, making the entire process of selection invalid.
- (3) The selection of Respondents No. 2 to 15 is illegal and void, as they have not been selected by a proper process of selection as per the mandate of Rule 47(2) of the Rules of 1992, inasmuch as that out of the three components provided for determination of merit, while the first component "PAST PERFORMANCE" has been completely overlooked, the second component "WRITTEN TEST" has been applied out of proportion to the extent of virtually covering the entire field, which has resulted into selection of non-meritorious and junior persons at the cost of supersession of large number of matured and competent hands, bringing the demoralising and shocking wave amongst the entire staff on the High Court establishment.

- (4) The entire process of selection is vitiated for the reason that the Selection committee has not indicated any reason for selection or non-selection of the candidates.
- (5) The petitioners in Special Civil Application No.351/98 have been illegally excluded from the oral test. All the candidates coming within the zone of consideration ought to have been called for interview and short-listing the candidates for oral interview on the basis of written test is not contemplated by Rule 47 (2) and as such the action is violative of the said rule and also the fundamental rights of the petitioners under Articles 14 and 16 of the Constitution of India.
- (6) The entire process of selection is arbitrary as the rule does not provide for syllabus, no guidelines are provided for preparation, no guidelines are provided as to division of marks for written or viva voce and for considering the service record.
- (7) In spite of the Rules being amended in 1992 and the post of Section Officer being the post of selection post, the rule is being followed discriminatorily, inasmuch as that in the year 1995, promotions on the post of Section Officer were given without holding written test.
- (8) Rule 47(2) of the Rules of 1992 is ultra vires on the ground that the said rule entirely negates the principles of seniority which for the purpose of promotion from the cadre of assistants to the cadre of Section Officer is not rational, fair and proper. The rule also does not provide any guidelines as to the nature of test, weightage to be given to past performance and to the written and oral test and as such irrational, arbitrary and violative of Article 14 of the Constitution of India.

A number of subsidiary contentions have been urged besides the broad grounds stated above. I shall deal with these subsidiary contentions as well while elucidating the broad grounds at the appropriate place.

5. It is contended by the learned Advocate appearing for the petitioners that by widening the zone of consideration, serious prejudice has been caused to the petitioners inasmuch as that it has enlarged the field of choice, which has led to their supersession by much junior persons. There has been some controversy with respect to the exact number of vacancies. However, after the reply has been filed on behalf of the High Court, the petitioners have not seriously disputed the existence of 25 vacancies for the year 1997. Reliance is placed on a G.R. dated 20.3.1982, which inter-alia, provides zone of consideration as under:

Number of vacancies No. of Officers to be
considered

01 05

02 08

03 10

04 or more 3 times of the number of
vacancies.

The Government Resolution issued by the State of Gujarat applies to the High Court establishment in view of Rule 50 of the Rules of 1992. Application of the said G.R. to the High Court establishment is not in dispute. Thus, for promotion to the post of Section Officers against 25 vacancies, 75 senior-most eligible Assistants fall within the zone of consideration. A submission was made to the Hon'ble the then Acting Chief Justice pointing out that out of 113 Assistants, 16 were not eligible as they had not passed the departmental examination, 6 were relieved from the cadre of Assistants for different reasons. Thus, 91 Assistants were eligible for consideration for promotion on the post of Section Officers. It was however, pointed out that as per the Government Notification, only 75 senior most eligible Assistants fall within the zone of consideration. Hon'ble the then Acting Chief Justice found that there was no reason not to call all the eligible candidates, when other 18 persons against whom adverse remarks are made in A.C.R. and against whom Departmental Enquiries are pending, are being also considered. The relevant order is extracted as follows:-

"91 includes 12 against whom adverse remarks are made and 6 against whom enquiries are pending. Therefore, restricting to 75 may mean restricting to 75 minus 18. There is no reason to exclude 76

to 91 (16) eligible persons when 18 other persons also being considered."

(Sd/-) 2.9.97"

6. The contention which I am required to answer is two-fold. Firstly, whether by extending the zone of consideration, the respondent-High Court has committed breach of the G.R. of 20th March 1982 and secondly, if there is breach of the G.R., what is the effect on the selection.

7. It is submitted by Mr S N Shelat, learned Addl. Advocate General appearing for the respondent-High Court that though Rule 50 (1) provides that "in respect of all such matters regarding the conditions of service of Court servants for which no provision or insufficient provision has been made in the rules, the rules and orders for the time being in force and applicable to servants holding corresponding posts in the Government of Gujarat, which are not inconsistent with these Rules shall regulate the conditions of services of Court servants", the said provision is subject to "such modifications, variations and exceptions if any, in the said rules and orders, as the Chief Justice may, from time to time, specify". The Hon'ble the then Acting Chief Justice, after carefully considering the matter and having regard to the fact that among the eligible candidates, there were number of candidates against whom adverse remarks were there and departmental enquiries were pending decided to widen the zone of consideration with a view to give opportunity of appearing at the selection test to all the eligible candidates. It is thus, submitted that the Hon'ble the then Acting Chief Justice, having thus applied his mind to this aspect and directed to give opportunity to all the eligible candidates, of appearing at the test for selection, there is no question of contravention of any rule or regulation or orders of the State or the High Court Rules with respect to the zone of consideration. I am unable to agree with the submissions made by the learned Addl. Advocate General.

8. There is distinction between the exercise of powers by the Chief Justice in framing the rules with respect to the condition of service of Officers and servants of the High Court under Article 229, including the power of modification and variations of the rules of the State Government applicable to the High court employees by virtue of power preserved under Rule 50(1) of the Rule of 1992 and the exercise of powers by the Chief Justice as Executive Head of the High Court

establishment under the rules. framed by him. The Chief Justice as well has to follow the rules framed by him punctually and faithfully as others are to follow. Any breach of rule by the Chief Justice cannot be construed as exercise of power of modification of the rules. Reverting to the direction dated 2.9.1997, in my view, the Hon'ble the then Acting Chief Justice was in error in considering that the 12 persons against whom there were adverse remarks, could be excluded from the zone of consideration. What is the effect of adverse remarks in the A.C.R., was a matter for the Selection committee to consider. A person cannot be excluded from the zone of consideration for the reason that there is adverse entry. Similarly, it was wrong to consider that six persons against whom departmental enquiry was pending, could be excluded from the zone of consideration. If the departmental enquiry is pending against a person in the eligibility list, the Selection Committee is required to follow a known procedure of "sealed cover". Thus, the very premises on which the zone of consideration has been extended is contrary to law.

9. Now I am turning to few decisions to which my attention has been invited by the learned Advocates for the parties. The first case on which reliance has been placed is the case of Vinod Kumar Sangal v. Union of India & Ors., reported in 1995 (4) SCC 246. It is essentially, a case of bunching of vacancies. In the said case, the petitioner was promoted as per the recommendation of the Departmental Promotion Committee of the year 1978. He however, did not accept the same for personal reasons. No Departmental Promotion Committee was convened during the period 1979 to 1984. However, during this period, he was given promotion on adhoc basis. Departmental Promotion Committee of 1985 did not recommend the petitioner for promotion. Challenging the rejection by the Departmental Promotion Committee of 1985, reliance was placed on the memorandum issued by the Government wherein emphasis was laid on holding the Departmental Promotion Committee annually. It was stressed in the memorandum that the delay in holding the meeting of the Promotion Committee results in bunching of vacancies which in turn enlarge the field of choice and upset the relative seniority positions in the higher grade on account of supersession. The memorandum also points out that large field of choice might result in excessive supersession. The respondent in the said case gave explanation for not holding the DPC during the period 1979 to 1984. The Court held that the reasons for not holding the DPC may be justified, but when the DPC met in the year 1985, it was required to make selection

on yearly basis for the vacancies of each particular year. In view of this, the Apex Court upheld the contention of the petitioner that restricted field of choice would have given a better chance of being selected. The Court held thus -

"The grievance of the appellant that the mode of selection adopted by the DPC in disregard of the instructions contained in the Office Memorandum dated 24.12.1980 operated to his prejudice, appears to be justified because if separate selection has been made for the vacancies which occurred in the years 1980, 1982, and 1983 the field of choice would have been much more restricted and the appellant would have had better chances of being selected."

The Court accordingly directed the DPC to consider the petitioner's case for promotion on the higher post for each of the years separately i.e. against the vacancies occurred in 1980, 1982, 1983 and to give him promotion from the date and year he is selected.

10. In the case of Ashok Kumar Sharma & Ors. v. Chander Shekhar & Anr., reported in JT 1997 (4) SC 99, at the competitive examination for recruitment on the post of Junior Engineer, 33 candidates also appeared who were not eligible on the relevant date. Though they had appeared at the B.E. Examination, the result was not declared and as such they were not eligible. However, the said 33 candidates were selected. Their appointments were challenged. The High Court held that they were not eligible but instead of setting aside the appointments, the court directed that they may be placed in seniority below qualified selected candidates. The 33 candidates approached the Apex Court. The appeals came up for hearing before the Bench comprising of Hon'ble Messrs Justice Dr. T K Thommen, V Ramaswami and R M Sahai, JJ. There was difference of opinion on the crucial question though all the three Judges agreed on the ultimate result. Majority held that allowing 33 candidates to appear for the interview was not impermissible. The learned Judges were of the opinion that by allowing the said persons to appear for the interview, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad-based as possible on the basis of qualification. However, R M Sahai, J held that 33 candidates should not have been allowed to appear for the interview since they did not possess the requisite academic/technical qualifications by the prescribed date.

However, the Bench allowed the appeal filed by the 33 candidates and set aside the judgement of the Jammu & Kashmir High Court. One of the original writ petitioners filed a review application and contended that just because some persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis and as such their applications ought to have been rejected at the inception itself. The proposition was sought to be supported by the decision of the Apex Court in the case of Rekha Chaturvedi (Smt.) v. University of Rajasthan & Ors., reported in JT 1993 (1) SC 220. The Apex Court disapproved the majority opinion that by allowing the 33 candidates to appear for the interview, the authority was able to get the best talents available. The three Judges Bench found the said case to be a clear case of error of law and error apparent on the face of the record. This decision is the complete answer to the view taken by the Hon'ble the then Acting Chief Justice when he extended the zone of consideration on the ground that it will give opportunity to all the eligible candidates. Thus, it is held that the zone of consideration cannot be extended in breach of the rule, on the ground of adverse A.C.R. or pendency of enquiry against some of the candidates or to make the selection broad based.

11. Mr S N Shelat, learned Addl. Advocate General appearing for the respondent-High Court has vehemently argued that enlarging the zone of consideration will not have an invalidating effect on the selection made by the duly constituted selection board. He has strongly placed reliance on the decision of the Apex Court in the case of All India State Bank Officers Federation & ors. v. Union of India & Ors., reported in JT 1996 (8) SCC 550. In the said case, the All India State Bank Officers Federation, a registered Trade Union of Officers of the State Bank of India challenged the new promotion policy of the Bank wherein the concept of zone of consideration was done away. It was contended that not to limit the zone of consideration to three or four times the number of vacancies was unreasonable. Attention was invited to the fact that consideration of all eligible candidates led to promotion of large number of relatively junior officers. The Court rejected the contention having found no error in the policy of "Not limiting zone of consideration". In the instant case, the application of the rule of zone of consideration is not in dispute. It is a case of selection in breach of G.R. dated 20.3.1982. In the State Bank Officer's case (*supra*), an alternate attempt was made to seek support from the

guidelines issued by the Government of India, providing the zone of consideration. In para 19 the contention was rejected on the ground that the guidelines expressly relate to Nationalised Banks and not to the State Bank of India. Thus, it is evident that the State Bank Officer's case (*supra*) is not an authority on the point of selection in breach of existing policy of limited zone of consideration. Mr Shelat has invited my attention to para 13 of the State Bank Officer's case (*supra*), wherein the Apex Court, while distinguishing Ashok Kumar Yadav's case (1985 (4) SCC 417) referred to the question posed and the answer therein, holding that the violation of rule of limited zone of consideration will not have invalidating effect on the selection. Ashok Kumar's case was a case of direct recruitment for 61 posts in Haryana Civil Services. As per the rule, no candidate was eligible for viva voce test unless he had obtained 45% marks. 1300 candidates secured 45% and above marks. The Haryana Public Service Commission called all the 1300 candidates for interview which continued for about half a year. Some of the candidates who were not selected challenged the selection. The High Court, after referring to Kothari commission Report on "Recruitment Policy and Selection Method for Civil Service Examinations" held that where there is composite test consisting of written test and viva voce test, the number of candidates to be called for interview in order of marks obtained in the written examination should not exceed twice or at the highest thrice the vacancies to be filled, quashed the selection. In that context, the Apex Court held that selection made by the Haryana Public Service Commission cannot be said to be vitiated merely on the ground that more candidates were called for interview against the view that not more than twice or at the most thrice the number of vacancies should be called for interview. It may be noticed that there was no policy decision with respect to limited zone of consideration encompassed in any rule or written guidelines. Thus, Ashok Kumar's case is also not a case of breach of any statutory rule or executive instructions containing "limited zone of consideration."

12. However, in the instant case, it is significant to note that the number of selected candidates is less than the number of vacancies, i.e. 14 candidates selected against 25 vacancies. Thus, the breach of G.R. dated 20.3.1982 will not have the effect of vitiating the entire selection. The things would have been different if more than 25 candidates would have secured more than 40% required marks in aggregate. Thus, it is only the

consideration of candidates beyond the zone of consideration i.e. beyond Sr.No. 75 in eligibility list being in violation and breach of G.R. dated 20.3.1982 which can held to be illegal. Consequently, it is held that selection of respondents No.10 to 15 namely, Mr G S Marappally, whose name appears at sr.no.76, Mrs N P Tekani, whose name appears at sr.no.77 in the list of eligible candidates, respondent No.12 Mr V K Pathak, at sr.no.85, respondent No.13 Mrs Sujitra Rajan at sr.no.88, respondent No.14 Mr A S Raghupathy at sr.no.89 and respondent No.15, Mrs Gracy S.T. at sr.no.90 is illegal and bad in law.

Ground No.2

13. It is contended by the learned Advocates for the petitioners that the respondent High court did not make the selection according to the vacancies which occurred in each year during the period 1995 to 1997 and bunched them together and made selection for all those vacancies which resulted in enlarging the field of choice and thereby prejudicially affected the chance of the selection of the petitioners. The learned Advocates, in support of the contention, placed reliance on the decision of the Apex Court in the case of Vinodkumar, (*supra*). In the said case, identical grievance was found justified and a direction was given to convene the DPC for considering the petitioner for selection against the vacancies which occurred in the year 1980, 1982 and 1983. The Court further directed to give promotion to the petitioner from the year of the vacancy against which he is selected. Reliance is also placed on decision of the Apex Court in the case of Union of India vs. Vipinchandra Hiralal Shah, reported in JT 1996 (9) SC 686. In the said case, the writ petitioner Vipinchandra Shah was a member of the Gujarat Administrative Service Class I. A select list for promotion in the IAS cadre was prepared clubbing the vacancies of the years of 1980 to 1986. The select list was challenged before the Central Administrative Tribunal. The Tribunal held that the Government committed error in clubbing the vacancies and thereby enlarging the zone of consideration which could prejudice the petitioner and therefore it was illegal. The Tribunal directed the Government to prepare the select list year by year from 1980 to 1986 and thereafter on the basis of vacancies from year to year without clubbing the vacancies of any particular year and as the part of exercise to consider the case of the petitioner for promotion to the service and should his name figure in the select list and, should the vacancies permit, to

appoint him to the service and to give him all consequential benefits on the basis of such appointment from the date of the appointment. The said decision of the Tribunal was challenged before the Apex Court by the Union of India. The Apex Court, relying upon its earlier decision in the case of Sayed Khalid Rizvi v. Union of India, reported in JT 1992 Suppl. (SC) 169, held that in view of the provisions contained in Regulation 5, unless there is good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making selection from among the State Service Officers who fulfil the conditions regarding eligibility on the first day of January of the Year in which the Committee meets and fall within the zone of consideration as prescribed in clause (2) of the Regulation. The Court also held that failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of the Select list for that year. If for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service Officers who were eligible and fall within the zone of consideration for selection in that year. It is submitted by Mr S N Shelat, Addl. Advocate General that the ratio in the case of Union of India v. Vipinchandra Shah (supra) has been laid down in the context of mandatory requirement of Regulation 5 of the Indian Administrative Service (Recruitment) Rules, 1954 which provides for meeting of the Selection Committee every year for the purpose of making selection from amongst the State Civil Service Officers, but there is no such requirement in the present case. The learned Advocates appearing for the petitioners have invited my attention to a Government Notification dated 14.12.1959 appearing at page 61 of the Hand Book for Personnel Officers issued in the year 1984 by the Department of General Administration, Government of Gujarat which stipulates meeting of the Departmental Promotion Committee every year. It is further submitted that in view of the Rule 50 (1) of the Rules of 1992, the said Notification equally applies to the High Court establishment. Thus, the decision of the Apex Court applies to the High Court establishment as well with full force.

14. Thus, in view of the binding decision of the Supreme Court and the Notification of the State of Gujarat referred to above, it is held that it is incumbent on the High Court to determine the vacancies of

each year on each post and convene the selection every year against the vacancies of that year and not to club the vacancies.

15. It is further submitted by Mr S N Shelat that there were 25 vacancies for which selection was held. He has also placed before me the notes and records which indicate that all the 25 vacancies are of the calendar year 1997. In view of this, the grievance of the petitioners with respect to bunching of vacancies on facts is not sustainable and the same is accordingly rejected.

Ground No.3

16. In order to appreciate the contentions, it is necessary to turn to Rule 47 which reads as follows:

"(1) The post of Section Officer and all higher posts shall be considered as selection posts and the selection shall be strictly on merits and record of performance and no Court servant shall have a claim to these posts merely on the strength of seniority.

(2)(a) For promotion to the post of Section Officer from Assistant the promotion will be effected strictly on consideration of efficiency and proved merits. Merits shall be determined on the basis of the past performance and performance at the test, written and oral to be taken by the Selection Committee as may be appointed by the chief Justice.

(b) For promotion to the post of Assistant from Clerk, the promotion will be effected on consideration of efficiency and proved merits. Merits shall be determined on the basis of the past performance and performance at the oral test to be taken by the Selection Committee as may be appointed by the Chief Justice.

(3) For promotion to the post of Assistant Registrar from Section Officer, to the post of Deputy Registrar from Assistant Registrar and to the post of Additional Registrar from Deputy Registrar,

promotion will be strictly on consideration of efficiency and proved merits.

(4) No one shall be promoted to the post of Assistant, (Section Officer and Assistant Registrar) unless he has passed the Departmental Examinations as prescribed.

(5) No person shall be promoted from the lower post to higher post unless he has experience of five years in the post from which he is to be promoted.

Provided that there is a person having experience as specified herein is not available for promotion and it is in public interest to fill up the post by promotion of a person having experience for a lesser period for the reasons to be recorded in writing the competent authority may promote such persons.

(6) (1) Promotion to the cadre of Assistants will be effected from the cadre of clerks and telephone operators.

(ii) Promotion to the cadre of Section Officers will be effected from the Assistants and Translators.

(iii) Promotion to the post of Assistant Registrar will be effected from Section Officers (and) Senior Translator."

17. A reading of Rule 47 shows that the post of Section Officer is a selection post to be filled in by promotion strictly on merits and on record performance. The merit is to be determined by the Selection Committee appointed by the Chief Justice, on the basis of -

- (a) Past Performance
- (b) Performance at the written test
- (c) Performance at the oral test

There appears to be no document, providing the mechanism for determination of merit. As per the practice, merit is determined by written test of 60 marks and 20 marks of oral test. A candidate is required to secure 32 marks (40%) out of 80 marks. How the odd magic number of 80 is evolved and what is its rationale, is not known. Mr B S

Sankwar, Assistant Registrar has stated about the evolution and development of the practice in para 5 of the reply. It is stated that upto 1979, promotions were given on the basis of seniority-cum-merit. The merit was considered on the basis of Confidential Reports and other service record. However, thereafter, a method of judging the capacity of the Senior Assistants due for promotion to hold the Supervisory post of Section Officer from their performance on the tables on which they were working was not found adequate and therefore, it became necessary to evolve some method in addition to the consideration of the Confidential Reports and other service record whereby the suitability or otherwise of the candidate can be assessed properly in the interest of office efficiency. It is also submitted that the system of taking written and oral test to assess suitability or otherwise on a comparative evaluation of the eligible candidates thus came into existence after 1979. In November, 1979, the Hon'ble the then Chief Justice directed to take interview of the Assistants concerned and prepare select list in the order of merit. They were also tested by asking them to prepare some submissions. Thereafter, in the year 1981, written test and oral interview were held. Since then written test and interview were taken on 31.7.82, 22.2.83, 31.12.83, 24.8.85, 7.3.87, 20.2.88, 2.3.96 and 27.9.97. In para 14, it is stated that the Selection Committee also considered the Adverse Reports recorded in the A.C.R. against the candidates. This fact does not find confirmation from the proceedings of oral test.

18. Mr S N Shelat has brought to my notice an unreported decision of this Court being Special Civil Application No.1272/80 decided on 1.9.80 to show that the said mechanism of written and oral test has been approved by the judicial verdict. In the said case, the petitioner had challenged the non-selection on the post of Superintendent (now re-designated as Section Officer) on the ground that the appointment to a selection post cannot be made on the basis of written and oral test and that it should be made on the basis of an overall consideration of several factors such as the candidate's experience, educational qualifications, service records etc. The High Court took the stand that a process of selection was spread over in two stages. At the initial stage, screening was done of the eligible candidates on the basis of Confidential Report and at the second stage on the basis of written and oral test. In view of this, the Court found that there was no substance in the grievance of the petitioner that the selection was made only on the basis of written and oral test. The writ

petition was accordingly rejected. The matter was carried in appeal by way of LPA No.159/80 which was rejected by the order of the Division Bench dated 15.9.80. The Court found thus -

"As far as the case on hand is concerned, the test was divided into two stages. The first test envisaged the examination of the confidential record, which would also reflect the educational qualifications and his past performance. The petitioner got through that test and stood at par with the remaining candidates. In the written test and in the oral interview, however, he did not fair as better as his successful brethren did. We find no arbitrariness in this method of testing the further merits of a candidate."

In my view, the aforesaid case has no application to the present case as at the first instance, it is not the case of the respondent-High Court that the process of selection was spread over into two stages and the service record of each of the candidates was seen at the stage of preparing the eligibility list. On the contrary, the specific case of the High Court is that the service record of each of the candidates were placed before the Selection Committee. It is to be noticed that the Selection Committee divided 20 marks of oral test into three parts i.e. 10 marks for knowledge of rules, 5 marks for knowledge of practice and procedure and 5 marks for general impression and personality. Thus, there is no mark allotted for the past performance. Be that as it may, the said judgment is based on Rule 38(2) of the High Court of Gujarat (Recruitment and Conditions of Service of Staff) Rules 1964 which reads as follows:

"The post of a Superintendent and any higher post shall be considered as selection posts and no court servant shall have a claim to them merely by way of seniority."

The old rule simply says that the post of Superintendent is a selection post and as such there shall be no claim on the basis of seniority. It does not provide, how selection shall be made and what shall be the basis. But the new rule not only says that the post of Section Officer is a selection post, but it further says that it shall be filled in strictly on the basis of merit and record of performance. The rule further postulates three components for determination of merit i.e. past performance, written test and oral test. Thus, under the new rule, "past performance" plays a significant role in

determination of merit. It appears that the High Court has not taken cognizance of the mandate given by the Hon'ble Chief Justice as contained in new Rule 47. In fact the new mechanism ought to have been evolved immediately after coming into force of Rules of 1992, in conformity with the mandate of Rule 47. Thus, it is not only wrong on the part of the High Court to continue with the old procedure of selection, even after coming into force of the Rules of 1992, but it is in utter disregard of the Rule 47. Thus, the unreported decision cited on behalf of the High Court has no relevance in the context of the Rules of 1992.

19. It is submitted by Dr.Mukul Sinha, learned Advocate appearing for some of the petitioners that distinction has to be made between the direct recruitment and promotion. In case of appointment by direct recruitment, merit is assessed on the basis of performance of the candidate at the written examination and viva voce. However, in the case of promotion, the employer has an advantage of judging the suitability of the candidate on the basis of past performance, except in the case of limited departmental competitive examination. It is submitted by Dr Sinha that in the instant case, the component of past performance under Rule 47 of the Rules of 1992 is used in the sense of positive past performance and not for the purpose of screening. The learned Advocate states that Rule 47(2) clearly postulates that "merit shall be determined on the basis of past performance and performance at the written and oral test."

20. The word 'merit' has not been defined. However, the Apex Court in the case of Guman Singh v State of Rajasthan & Ors., reported in 1971(2) SCC 452 has pointed out the necessary attributes of "merit" in service jurisprudence, as follows:
thus:

"Merit is a sum total of various qualities and attributes of an employee such as his academic qualifications, his distinction in the University, his character, integrity, devotion to duty and the manner in which he discharges his official duties. Allied to this may be various other matters, or factors, such as his punctuality in work, the quality and out-turn of work done by him and the manner of his dealings with his superiors and subordinate officers and the general public, his rank in the service and annual confidential report. All these and other

factors may have to be taken into account in assessing the merit."

21. In the case of Union of India v. M L Kapoor, reported in AIR 1974 SC 87, the Apex Court pointed out that "Merit" is capable of being judged from different angles. The Court, in para 17 said, thus -

"Merit is certainly an elusive factor capable of being judged very differently from different angles or, by applications of varying tests of it by different persons, or, by the same persons, at different times."

In the said case, passage from Leonard D White's "Introduction to Public Administration" had been referred with approval by the Court wherein it is said that the principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organisation. The Court further said that the main interest to be served is the public interest not the personal interest of the members of the official group concerned. In case of selection on merit the court warned in these words:

"No doubt, care has to be taken that it is so operated as to really secure the choice of the most meritorious by honest and rigorous applications of correct and proper tests."

Thus, there is heavy duty cast upon the employer to evolve a correct and proper test and then to apply the same correctly.

It is needless to emphasise that merit is given due weightage in the matter of promotion, especially for senior appointment, to ensure greater efficiency in the functioning of the establishment and also to provide adequate incentives to the employees to give their best. Once promotion by merit alone is provided in the recruitment rules, the first stage is evolution of proper mechanism for determination of Merit and the second stage is its rigorous and honest application. A sound mechanism or process to determine the merit is of vital importance. If the promotions are governed by faulty process not only the object of the rule to have persons of merit on selection post will be defeated, but the "left-outs" will in all probability continue floating in the same establishment nursing grievances against employers. The consequent low morale will affect the smooth and effective working of the establishment. The

merit can be judged applying various tests, which includes written test to judge intellectual ability, knowledge of the relevant rules, power to analyse a problem, application of relevant rules and power of clear and lucid expressions; assessment of past performance to judge character, integrity, punctuality, leadership, tact, imagination, behaviour and courtesy, rich experience gained through career in service, administrative qualities, ability to carry on with staff. This can be done by proper and scientific assessment of service record and Annual Confidential Reports; oral test to judge personnel qualities, broad outlook, oral expression, general get up, some intellectual qualities which cannot be tested by written examination, physique etc. Thus, the Hon'ble Chief Justice, in his wisdom, while exercising the powers under Article 229 of the Constitution of India, in framing Rule 47 of the Rules of 1992, provided combination of three components i.e. past performance, written test and oral test for determination of merit in the matter of promotion on selection post. However, the mechanism evolved prior to 1992 has been carried forward, unmindful of the fact that it does not contain the important component of "past performance". Without over-emphasizing the importance of "past performance", it cannot be disputed that for recruitment from among the persons of matured personality, appraisal of past performance is the basic and essential requirement. It is also not in dispute that the system of writing Annual Confidential Report is in existence in the High Court establishment. It is of course true that it has been subject to criticism to certain extent, but for that efforts can be made to bring change therein by substituting a new and more open Participatory Appraisal System. The comparative merit could be assessed by taking into consideration, the Annual Confidential Reports. Dealing with seniority in judging the merit, it is true that seniority occupies the back seat in case of selection purely by merit, still, it cannot be ignored completely. The Apex Court in the case of Union of India v. M L Kapoor (*supra*), while considering different angles of merit, observed that seniority is also one of the several factors affecting the assessment of merit as comparative experience in service. The Court suggested that there should be certain number of marks allotted for the purpose of facilitating evaluation of each year of the experience gained in service.

22. In the existing process of selection, while out of 80 marks, 60 marks are occupied by written test, no marks are assigned for past performance. Annexure E (D)

at page 39 in Special Civil Application No.351/98 is the only question paper to assess merit by written test. A glance at the paper indicates that perhaps it is to test capability to draft submissions in different situations. These are the usual and routine drafts known in every establishment. Thus, if a person for the time being can cram few routine drafts of submissions, he can acquire a bright chance of promotion on selection post, marching over large number of other employees in the name of merit, irrespective of the fact that his service record is not good, and ACR indicates negative qualities or in any case, does not indicate any positive quality. In the instant selection, it is alleged that the respondent No.2 M P Parmar and respondent No.3 Miss V M Desai have been selected on merit basis, even though there is adverse remarks in their ACR. This fact is not disputed by the Additional Advocate General. This clearly expose the merit of the process of selection, applied for determination of merit. The exaggerated weightage given to written test, at the cost of total exclusion of past performance is arbitrary, unjust, unfair and contrary to

Rule 47 of the Rules of 1992. Thus, the process of selection through which the respondents No.2 to 15 have been selected is not only wrong and unsatisfactory, but it also being in disregard to the mechanism provided under Rule 47 of of Rules of 1992, is held to be illegal and void.

23. Dealing with the second limb of the contention, i.e. selection of persons of average merit in the name of proven merit, it is significant to notice that rule 47(2) stipulates "proven merit", not merit simplicitor. Thus, it completely excludes average merit by securing minimum pass marks. Such bare pass marks may bring a candidate in the zone of consideration, but such persons cannot be said to be persons of "proven merit". I am fortified in my view by the decision of the Apex Court in Janki Prasad v. State of Jammu & Kashmir, reported in AIR 1973 SC 930. In the said case, the Court observed in para 19 that when promotion is by selection, the merit takes first place and it is implicit in such selection that man must not be just average.. In the instant case the merit of the selected candidates, respondents No.2 to 15. as found by the Selection Committee, is as under:

Resp.	Seat	Name of the Assistant	Marks obtained
No.	No.		(out of 80 marks)
			Pass marks 32)

2.	13	Mr M P Parmar	35
3.	18	Miss V M Desai	36
4.	45	Mr A P Mistry	32
5.	50	Mrs H D Gandhi	34
6.	51	Mr Y M Momin	32
7.	60	Mr G J Jadeja	33
8.	66	Mr M.A.G.M. Shaikh	36
9.	74	Mr V C Thomas	32
10.	76	Mr G S Marapalli	40
11.	77	Mrs N P Tekani	36
12.	85	Mr V K Pathak	40
13.	88	Mrs Sujitra Rajan	38
14.	89	Mr A S Raghupathy	44
15.	90	Mrs Gracy S T	38

It is indeed a travesty of selection that persons of average merit have superseded large number of employees in the cadre of Assistants in the name of merit. Most of the selected candidates scored minimum marks i.e. 40% which is just above 1/3 of the maximum i.e. III Division marks. Fixing qualifying mark as 40% and ultimate selection on merit are two different things. A person in scoring total 40% marks, by no stretch of imagination can said to be a person of proven merit. In Janki Prasad's case (*supra*), the Apex Court, with respect to scoring of just 1/3 of maximum marks i.e. 30%, observed, "it would be absurd to make selection with such a cutting score." The Court further observed "when responsible posts are filled by selection, cases are known where selections are not made because candidates of the required merit were not available". Thus, in the instant case, out of 14 candidates selected on the basis of proven merit, except respondent No.10 Mr G S Marapally, respondent No.12, Mr V K Pathak, respondent No.14 A S Raghupathy, remaining have not been able to secure even 50% marks. They have scored just III Division marks. It is strange that such persons have been given promotion on the basis of proven merit. Out of 21 candidates, not even a single candidate has been able to secure distinction or first class marks. Thus, even if it is considered that the persons have secured second class, i.e. 50% marks, are persons of proven merit, then also except respondents No.10, 12 and 14 cannot be said to be the persons of proven merit. A person of average merit cannot supersede another person of just average merit or somewhat below that. It is worth noticing that some of the respondents have secured only just pass marks i.e. only 32. The picture, as emerged, is grim and unfortunate. Either there is no merit in the entire cadre of Assistants or the mechanism applied to test the merit is defective. I am not prepared to accept that there is not a single person of

"proven merit". But if it is correct then, it requires immediate remedial measures, as Assistants are also persons appointed on promotion from Clerk on consideration of efficiency and proved merit, determined on the basis of past performance, written and oral test, as provided under Rule 47 (2)(4). It is suggestive to provide training and arrange regular refresher courses. The written test solely based on drafting of submissions requires to be reviewed. Search for person of merit needs to be more intensive from various angles. Of course, Constitution of Selection Committee is the prerogative of the Chief Justice. It is however, suggested that while presence of the Judges in the Committee may be necessary for more than one reasons, it is also true that the Hon'ble Judge does not come in direct contact of the working of the Assistants and as such it is desirable to include senior officers of the Registry, who had occasion to watch the performance of the candidates. This will have positive effect on discipline of the staff as well. The staff should be rotated by inter-departmental transfers, so that they may equip themselves with knowledge of all the branches i.e. Judicial, Administration, accounts, Vigilance etc. Reverting to the issue, it is held that selection of respondents No. 2 to 15 except respondents No.10,12, and 14 is illegal, on the ground of, they being not persons of "proven merit" as required by Rule 47 (2) of the Rule of 1992.

Ground No.4

24. It is contended by the learned Advocates for the petitioners that the Selection Committee has not recorded the reasons for selection or non-selection of the candidates. Thus, the recommendation made by the Selection Committee is void and of no consequence. Reliance is placed on a decision of the Apex Court in the case of Union of India v. M L Kapoor (*supra*). In the said case, in view of the requirement of Regulation No.5 (v) of the Indian Administrative Service (Regulation) 1955, the Court held that recording of reasons is mandatory. This authority is of no help to the petitioners as the said ratio has been laid down in the context of requirements of Regulation No.5(v) of the IAS (Regulation) 1955 imposing the mandatory duty upon the Selection Committee to record "its reason for the proposed supersession". The learned Advocate has next placed reliance on the case of State Bank of India v. Kashinath Kher, reported in AIR 1996 SC 1328. It is held therein that, in case of selection post, selection record must indicate reasons, howsoever, brief they may be, so

that when tested by judicial review, the Court would be better assisted by such record to reach correct decision in law. This case is also of no help to the petitioners as in the instant case, the merit of the candidates has not been assessed on the basis of service record. The reason of supersession is very much apparent from the marks secured by each of the candidates in written test. The Apex Court, considered the aspect of recording of reason in greater depth in Major General IPS Dewan v. Union of India's case reported in JT 1995 (2) SC 654. It is held therein that unless the rules so required, the Selection Committee/Selection Board is not obliged to record reasons why they are not selecting a particular person and/or why they are selecting a particular person, as the case may be. The learned Advocates for the petitioners have failed to point out any rules which require recording of the reasons. Mr S N Shelat, learned Addl. Advocate General appearing for the respondent-High Court also brought to my notice a decision of the Division Bench of this Court in the case of Dr K K Bhatt v. Gujarat University reported in 21 (2) GLR 485. In that case, this Court observed that if it is held that the Selection Committee is obliged to record reasons, it will open flood-gates to mischief. One who appears before the Selection Committee of experts for being selected as a candidate cannot be given a right to cross-examine the members of the Selection Committee. The Division Bench, however, said that a case in which mala fides are alleged against the Selection Committee will stand on an altogether different footing. In view of this, I find no substance in the contention of the petitioners with respect to recording of reasons for their supersession and the same is accordingly rejected.

Ground No.5

25. It is contended by the learned Advocate for the petitioners in Special Civil Application No.351/98 that the recommendations of the Selection Committee is illegal and void for the reasons that they were not interviewed by the Selection Committee, inspite of the fact that they were within the zone of consideration and they had appeared for the written examination. In this regard, the say of the respondent High Court is that the Selection Committee followed the procedure of holding written test of 60 marks followed by oral test of 20 marks. The criteria adopted for the selection was that the candidate who score 40% marks in aggregate out of 80 are considered eligible for selection on order of merit. Therefore, to be eligible for selection a candidate was required to obtain minimum 32 marks out of 80 in

aggregate at the written and oral test. However, candidates who had obtained only 11 or less marks at the written test, could not make aggregate of 32 marks even if they were to get full 20 marks at the oral test. Hence it would have been an exercise in futility to call those candidates for interview, who had obtained less than 12 marks at the written test and only such candidates were excluded for oral interview by the Committee. In view of the reply of the High Court, there is no substance in the contention raised by the petitioners and the same is accordingly rejected.

Ground No.6

26. The petitioners have voiced grievance that though 60 marks are allotted for the written examination out of total of 80 marks. no syllabus has been provided. In the absence of syllabus, it was not possible to prepare themselves for the competitive examination. They were also not told with respect to the marks for past performance, written test or viva voce. In an affidavit filed by Mr B S Sankwar, Asstt. Registrar it is stated that syllabus is not required to be prescribed for the selection of candidates for promotion on merit. So far as written test is concerned, with the grasp of working knowledge, practice and procedure in force coupled with power of expression etc. of the candidate is the criteria. It is also stated that as per practice, papers set for the written test taken in the past were distributed well in advance free of cost, so that they can prepare these for the forthcoming test. Since the petitioners were given papers of the preceding examinations, and therefore, it can be said that they were aware about the pattern of questions and on that basis they could prepare themselves. In view of the reply, I find no substance in the grievance of the petitioners. However, to provide a proper scheme and guidelines is desirable.

Ground No.7

27. It is contended by Mr M B Gandhi, learned Advocate for the petitioners that the respondent-High court is taking a different stand at different stages with respect to the criteria and the manner of selection. While a stand is taken that since 1983, promotions on the post of Section Officer is made on the basis of written and oral test, in the year 1995, the respondent while appointing 5 Assistants to the post of Section Officers, did not hold any written examination, nor did they follow

any norms for the zone of consideration. In this regard, the stand taken by the High Court is that since those posts were of prior to 1992, and therefore, it was not necessary to take written examination and oral test. It is also submitted that in Special Civil Application No.3059/95, the respondent High Court took the stand that the date on which the procedure of recruitment for the selection starts, is not the relevant date, but the date on which the vacancies fall vacant would govern the situation. However, now the stand has been taken that date of vacancies is not the criteria for considering the eligibility of a candidate and the eligibility has to be determined on the date of intimation of the process of filling of the vacancies. It is not necessary to go into details on this contention, as this is not going to have any invalidating effect on the selection process. However, it is desirable that the respondent-High Court undertakes to provide a well defined recruitment policy whether it is for direct recruitment or for promotions at all levels, and the same should be adhered to firmly. A well-defined recruitment policy and transparency in its functioning is particularly expected from a higher judicial body like the High Court.

Ground No.8

28. It is submitted by Dr Mukul Sinha, learned Advocate for the petitioners in Special Civil Application No.351/98 that Rule 47(2) of the Rules of Rules 1992 is ultra vires as it entirely negates the principle of seniority which is not rational, and as such there is violation of Article 14. It is also submitted that the rule is arbitrary inasmuch as, it does not provide any guidelines as to the nature of test, the weightage to be given to past performance, written and oral test. The learned Advocate placed reliance on a decision of this Court reported in 21 GLR 1039. I am not inclined to examine the validity of the Rule in the present Special Civil Applications, as I have held the entire process of selection illegal and void on other grounds. The validity of the rule is left open undecided. However, suffice it to say that now it is well settled that Article 229 of the Constitution of India makes the Chief Justice of a High Court the supreme authority in the matter of appointment of the High Court Officers and the Chief Justice has been vested with vast powers to run the High Court and its administration independently. It is of course true that the decision of the Chief Justice on the administrative side is subject to judicial review like action of any other authority. Reference be made to a decision in the case of High Court of Judicature for

Rajasthan v. Ramesh Chand Paliwal & Anr., reported in JT 1998 (2) SC 1. Dr. Mukul Sinha states that he does not dispute the power of the Chief Justice in the matter of appointment of Officers and servants of the High Court. He has however, invited my attention to the observations of the Supreme Court in the case of H C Puttaswamy v. Hon'ble Chief Justice of Karnataka, reported in AIR 1991 SC 295 which reads as follows:

"There is imperative need for total and absolute administrative independence of the High Court. But the Chief Justice or any other Administrative Judge is not an absolute ruler. Nor he is a free wheeler. He must operate in the clean world of law, not in the neighbourhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by same principles and values as those of the Court he is serving. He cannot depart from and indeed must remain committed to the constitutional ethos and traditions of his calling. We need hardly say that those who are expected to oversee the conduct of others must necessarily maintain a higher standard of ethical and intellectual rectitude. The public expectations do not seem to be less exacting."

29. In the said case, by a Notification dated 29th May, 1978, the High Court of Karnataka invited applications for the post of 40 Second Division Clerks and 25 posts of Typists and Typist-Copyists in the establishment of the High Court. The Notification provided that the selection would be to fill up those existing vacancies and for preparing a waiting list. A large number of candidates applied for the posts. The Chief Justice of the High Court appointed as many as 398 candidates as against the 40 posts advertised. Of them, he retained 56 on the establishment of the High Court and the rest were transferred to the subordinate Courts. The appointments and transfers were made in instalments during the years 1980, 1981 and 1982 and the last of the appointment was in September, 1983. The petitioners who were also the applicants in response to the advertisement of 1978 moved the High Court by way of filing writ petition making the grievance that the Hon'ble Chief Justice made appointments from time to time without considering their case and as such the appointments made by him are arbitrary and in derogation of the rules of recruitment. The High Court allowed the petition and expressed that the appointment made by the then Hon'ble Chief Justice were in serious violation of statutory law.

The Apex Court agreed with the High court that the methodology adopted by the Chief Justice was manifestly wrong and it was outlined deviation from the course of law which the High Court has to practice and observed. In that context, the aforesaid observations were made by the Apex Court.

30. It is contended by Mrs Ketty A Mehta, learned Advocate appearing for the respondent No.2 to 15 that it is not the function of the Court to review the decision of the Selection Committee in the matter of selection. Whether the candidate is fit for a particular post or not has to be decided by the Selection Committee. In support of this contention, the learned Advocate has placed reliance on various decisions reported in 1987 (4) SLR 383, 1993 (7) SLR 1, 1995 (1) SLR 426. There can be no dispute to this proposition. It is well settled that it is not for the Court to interfere with the decision of the Selection Committee except on the ground of such illegality or pertaining to material illegality in the constitution of the Committee or its procedure vitiating the selection or proved malafides against the Selection Committee etc. Mrs K A Mehta has also dealt with the allegations made against some of the selected respondents with respect to their eligibility etc. She has also invited my attention to the affidavit filed by Mrs Gracy S.T., respondent No.15. The allegations made against each of the selected respondents have been dealt with in detail by Mr B S Sankwar, Asstt.Registrar in his affidavit. It is not necessary to deal with the allegations in detail. The Selection Committee has acted in accordance with the procedure in existence.

31. In view of the aforesaid, both the Special Civil Applications being Special Civil Application No.351/98 and 1298/98 are allowed and following order/directions are given:

- (i) The impugned order dated 31.1.1998 promoting respondents No.2 to 15 as Section Officers is declared illegal and void, consequently the same is quashed and set aside.
- (ii) The respondent No.1 is directed to evolve fresh process of selection for the post of Section Officer in conformity with Rule 47 of the Rules of 1992, giving due weightage to all the three components of determination of merit, as indicated in the judgment.
- (iii) The respondent No.1 is directed to proceed with

fresh selection for the post of Section Officers through selection process as directed in para 31 (ii) and complete the same within a period of three months.

(iv) The respondents No. 2 to 15 may be permitted to work as Section Officers for a further period of three months from today i.e. the day of pronouncement of the judgment or till fresh selection is made on the post of Section Officers, in accordance with the new process of selection as directed in para 31 (ii), whichever is earlier. However, this will not create any right or equity in their favour.

Rule in each Special Civil Applications are made absolute to the aforesaid extent. No order as to costs.

....
msp.